

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on January 15, 2001
at 3:00 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Bill Tash (R)
Sen. Mike Taylor (R)
Sen. Ken Toole (D)

Members Excused: Sen. Lorents Grosfield (R)

Members Absent: None.

Staff Present: Nancy Bleck, Committee Secretary
Mary Vandembosch, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB126, 1/11/2001
Executive Action: None.

HEARING ON SB 126

Sponsor: SEN. JOHN BOHLINGER (R), SD 7, Billings

Proponents: Eileen Morris, Chair, Yellowstone Valley Citizen's
Council; the Billings affiliate of the
Northern Plains Resource Council

Bill Shikany, representing himself
Anne Harris, Yellowstone Valley Citizen's Council;
the Billings affiliate of the Northern Plains
Resource Council
Vern Bass, representing himself
Gray Harris, Yellowstone Valley Citizen's Council
Denise Roth Barber, representing herself
Kristin Sanderson, Montana Audubon
Anne Hedges, Montana Environmental Information
Center

Opponents: Charles Brooks, Billings Area Chamber of Commerce
Webb Brown, Montana Chamber of Commerce
Gail Abercrombie, Executive Director, Montana
Petroleum Association
David Debats, ExxonMobil Billings Refinery
Max Sims, Environmental Health and Safety
Engineer, Cenex Harvest States Cooperative
Refinery, Laurel, Montana
Terry Coble, Asarco, East Helena, Montana
Rae Olsen, Director, PP&L Montana, LLC
Steve Wade, Conoco
Don Allen, Western Environmental Trade Association
Dexter Busby, Montana Refining Company

Opening Statement by Sponsor:

SEN. JOHN BOHLINGER, SD 7, Billings, opened by explaining geographically where the people of his district lived utilizing a visual map and reported his district included the north and south sides of the old part of Billings and also included the Conoco Refinery, Pennsylvania Power and Light (PPL) Montana's coal-fired electric generating plant, and the Great Western Sugar Company.

SEN. BOHLINGER went on to say that the people of this district, because they lived in close proximity to these sources of sulfur dioxide as well as the ExxonMobil Refinery, the Coal Generation Power Plant and the Montana Sulphur and Chemical Company, had long been concerned about the injurious affects of high levels of sulfur dioxide. Sulfur dioxide, commonly known as SO₂, is a gas that is produced by the burning of fossil fuels, such as coal and oil. The American Lung Association reported that sulfur dioxide triggered a sudden swelling in the air passageways that restricted a human's ability to breathe. **SEN. BOHLINGER** stated that it was especially harmful to people with respiratory ailments, asthma, or chronic bronchitis and was also a problem for children whose lung capacity was small and for elderly people. **SEN. BOHLINGER** stated that, according to the American Lung Association and their study, Yellowstone County had

approximately 1,775 children that suffered with asthma, 3,000 adults that suffered with asthma, and 6,400 people with chronic obstructive pulmonary diseases who were at risk because of sulfur dioxide emissions. **SEN. BOHLINGER** also stated that because sulfur dioxide was heavier than air it tended to concentrate low to the ground and it had the ability to attach to particles in the air such as dust, smoke, and pollen. He also stated that the U.S. Environmental Protection Agency (EPA) reported that air that has these particles suspended in it could have a much higher concentration of sulfur dioxide than particle-free air and that breathing the air containing particles of sulfur dioxide could lead to increased damage of one's lung capacity. **SEN. BOHLINGER** also indicated that the effects of sulfur dioxide on health was made worse by cold air and dry air, both of which were present in Billings during winter months when the area was subjected to thermal inversions. He also stated that sulfur dioxide was also damaging to vegetation and could lead to a significant loss in crop yield and was the principal cause of acid rain which destroyed building materials, like marble, limestone and mortar. **SEN. BOHLINGER** shared that his interest in dealing with this problem came as a result of his first campaign effort in 1992 in response to the question that he had asked people as he went door to door and that was "What is your greatest legislative concern?". **SEN. BOHLINGER** asserted it was emphatically stated "repeal the Hanna bill" which in 1987 our legislature exempted Yellowstone County and the industries in that county from complying with the more stricter state standard for sulfur dioxide pollution levels. In 1995 and in the 1997 sessions of our legislature, **SEN. BOHLINGER** introduced legislation to repeal the Hanna bill which would have provided for an enforcement of the state's standard through the establishment of the emission caps per source, the same method that was used in enforcing the federal standard. In 1997, **REP. ROYAL JOHNSON** and **SEN. BOHLINGER** introduced separate legislation to repeal the Hanna bill and return Yellowstone County to the state standard. **SEN. BOHLINGER** stated that the 1997 legislature chose **REP. JOHNSON's** bill with an assembled repeal that lacked effective enforcement for a complex air shed like the Yellowstone Valley. **SEN. BOHLINGER** reported that with a simple repeal the Montana Department of Environmental Quality (DEQ) relied on ambient air monitors to detect violations of our air quality standards which could not determine the source and degree of responsibility. **SEN. BOHLINGER** stated this was extremely problematic in areas where there were multiple sources, such as in Yellowstone County or East Helena. He also related that in Billings there were eight ambient monitors that measured sulfur dioxide from multiple industrial sources. When one of those ambient monitors measured a violation, the state had to analyze the topographic and climatic and industrial data to determine both who the

responsible parties were and the amount to which this industry source contributed to this violation. **SEN. BOHLINGER** alleged that it was time consuming and if one of the parties disputed the results of the findings, because of the difficulty in proving who was responsible, a lengthy court proceeding would follow and the public health was not adequately protected. **SEN. BOHLINGER** asserted that **SB 126** would require the DEQ to develop emission control plans in multiple source areas, such as Yellowstone County, and that the heart and soul of these emission control plans were emission caps for each major source which would be enforced with existing in-stack monitors. **SEN. BOHLINGER** also shared that there seemed to be confusion regarding these emission control plans and emission caps in that others felt the state already had emission control plans in place through the development of the State Implementation Plan (SIP) and that each major source of sulfur dioxide in Yellowstone County already had emission caps to comply with. **SEN. BOHLINGER** agreed this was true, however, the SIP and the corresponding emission caps ensured and demonstrated compliance only with the federal sulfur dioxide standard which allowed for the legal release of 37,066 tons of sulfur dioxide; significantly higher than current pollution levels in Yellowstone County which last year amounted to 13,246 tons. **SEN. BOHLINGER** stated that the polluting industries in Yellowstone County, to their credit, had invested in pollution control equipment and because of this investment had reduced sulfur dioxide emissions from their high level in 1993 of some 35,266 tons to the 1999 level of some 13,246 tons which was a reduction of 22,000 tons or 62% less than the 1993 level. **SEN. BOHLINGER** congratulated the industrial base in Yellowstone County for their investment and response in recognizing that there was a need there but stated he found it puzzling that, in spite of these investments by industry and significant reductions in sulfur dioxide emissions, the industry would oppose this bill. **SEN. BOHLINGER** said industry would report there was no reason for setting a lower emission cap to protect the state ambient standard and that this was unnecessary. Under present law, the SIP only ensured compliance with the more lenient federal standards that allowed even more pollution than we have had in the past ten years and **SB 126** would ensure the protection of the health and people in Yellowstone County. **SEN. BOHLINGER** referenced section one of the bill where it called for the development of emission control plans for each source in areas where multiple industrial sources were producing sulfur dioxide in close proximity; and the EPA had required the state to develop a SIP for sulfur dioxide for the area. Subsection two of section one of the bill stated that the emission control strategies must be consistent with the federal emission control plan and the SIP developed for the area. Section two of the bill reduced the allowable exceedences of the one hour average from 18 times a

year to three times a year. **SEN. BOHLINGER** believed that 18 exceedances far exceeded any necessary safety buffers, especially given the DEQ records that showed very few exceedances in recent years and that the most reported were back in 1993 when five exceedances were reported at a monitor in Billings. **SEN.**

BOHLINGER challenged if there were room for negotiation on this bill it might provide some comfort level to our industrial base in Yellowstone County if we were to negotiate that level up to what the maximum number of the record emissions were, which was five exceedances. This would be one sort of amendment that might be considered to be undertaken. **SEN. BOHLINGER** stated he thought that in allowing for 18 exceedances, when we found that there had never been more than five exceedances, provided a huge loophole in the law and it made it hard for the public to take seriously the claim that the state was here to protect the public health.

SEN. BOHLINGER respectfully disagreed with the polluting industries in Yellowstone County whom did not feel that this bill was necessary and stated he had conversations with industry and he understood their opposition but disagreed with their premise.

SEN. BOHLINGER professed that the people of his district worked long and hard to return the state standards to Yellowstone County and did not feel as though their work was over until the state could ensure the people of Yellowstone County that these state standards were actually enforceable and that the state had a meaningful way of reporting this data. **SEN. BOHLINGER** urged the committee vote in support of **SB 126**.

{Tape : 1; Side : A; Approx. Time Counter : 1.1 - 17.1}

Proponents' Testimony:

Eileen Morris, Chair of the Yellowstone Valley Citizen's Council, spoke in support of **SB 126** and offered written testimony, **EXHIBIT (nas11a01)**.

{Tape : 1; Side : A; Approx. Time Counter : 17.3 - 24.8}

Bill Shikany, representing himself, spoke in support of **SB 126**.

Mr. Shikany was a retired teacher, having taught at Billings Westside School for 30 years, and had been involved with this air quality issue in Billings for that long also. **Mr. Shikany** was currently the city's appointee to the Yellowstone County Clean Air Committee, though he spoke to the committee on behalf of himself. This past year **Mr. Shikany** had two close friends pass away and in light of their memory and mission, **Mr. Shikany** felt a duty and responsibility as an informed electorate to share what he knew about various issues and persisted with this issue and any pollution issue as he felt it was very important concerning

public health, especially for children and women. A doctor from the University of California-Los Angeles reported that in the states, women and children were more susceptible to pollutants in our environment because of their organ size. **Mr. Shikany** also noted that Billings was the richest community in Montana and had the greatest medical facilities, yet the people of Billings lived with this persistent air pollution. **Mr. Shikany** maintained we must take preventative action and **SB 126** would help to do so. He also shared that he went to a discussion this summer on the fuel cell and its development within the Billings community. **Mr. Shikany** stated that the economic development group that hosted this conference had a priority and that priority was about cleaning up the air in Billings in order to promote economic development. **Mr. Shikany** felt that there should be accountability amongst industry just as is expected in the schools where he had worked. He felt **SB 126** would address that. He stated this was why computer modeling was so important. **Mr. Shikany** also stated that his furnace in his house went out one cold day and his grandkids were visiting and he called in to report that there was something wrong with his furnace and was asked where he lived. When he questioned why that was asked of him, he was told that if he lived down in the north park area, which is in **SEN. BOHLINGER's** district, he should have that checked immediately because they get inversions particularly in that area and it will not allow the carbon monoxide to flow outside of one's furnace. **Mr. Shikany** also reported that the primary care givers for the kids in these areas, including Lockwood, were school nurses. These kids were the ones that would suffer from pulmonary diseases because they go undetected because they can not afford medical care and they are affected by that pollution. **SB 126** would provide a preventative measure. Industry needed to be commended for what they have done thus far but rising healthcare costs were dominant in our lives, especially for the elderly. **Mr. Shikany** hoped we would take these preventative steps by supporting **SB 126**.

{Tape : 1; Side : B; Approx. Time Counter : 7.8 - 15.6}

Anne Harris, Northern Plains Resource Council and Yellowstone Valley Citizen's Council, spoke in support of **SB 126** and offered written testimony, **EXHIBIT(nas11a02)**.

{Tape : 1; Side : B; Approx. Time Counter : 16 - 19}

Vern Bass, representing himself, arose in support of **SB 126**. **Mr. Bass** had been a member of Yellowstone Valley Citizen's Council since 1994. He was also an attendee of Johns Hopkins School of Public Health and studied epidemiology and statistics. **Mr. Bass**

felt that this bill was a followup to the 1997 bill sponsored by **REP. ROYAL JOHNSON**. **Mr. Bass** stated **REP. JOHNSON's** bill was "step one" and also, at that time, **SEN. BOHLINGER's** bill was too far, too fast, for people to understand. On the other hand, **SEN. JOHNSON's** bill did just what was needed to be done by getting rid of that exemption for the Yellowstone valley. **Mr. Bass** felt that bill had an impact and industry was to be commended for that though he thought it was now the time to take "step two" and change the method by which we looked at that and that method was stated as computer modeling. He believed that was shorthand and that computer modeling was actually mathematical modeling as it used an algebraic algorithm. **Mr. Bass** explained that with computer modeling, when a whole area is mapped, it can be planned with how much affect each stack could have and thereby could establish a standard for every single stack. With this kind of modeling you could tell exactly who was responsible and you could call them up and tell them. This kind of modeling would provide an effective method of improving our public health. **Mr. Bass** explained that he lived on Virginia Lane above Pioneer Park; a high area as high as "the heights". **Mr. Bass** stated that most people do not realize the height of that area because it was around the bend where it gets the first roll off of the valley and it kind of stops and hangs there, referring to the DEQ maps as a visual tool. **Mr. Bass** and his wife had respiratory problems which was why he got involved with the Yellowstone Valley Citizen's Council in 1994. **Mr. Bass** stated another advantage of this measure of prevention was that if we got in a situation where we could not pinpoint precisely who was responsible we could get more court cases for the state. Referring to the fiscal note, **Mr. Bass** stated there really was no fiscal impact to the state saying any additional cost would be for employment of one person performing administrative duties and that cost could be covered by any violation fines and those fines might even provide additional revenue generation.

{Tape : 1; Side : B; Approx. Time Counter : 19.2 - 24.8}

Gray Harris, Yellowstone Valley Citizen's Council, had lived in Billings 19 years and worked for the federal government. **Mr. Harris** moved his family from Lewistown to Billings and the first year they were in Billings they moved four times trying to find a way to get out of the influence of sulfur dioxide which they found out was pretty much impossible. **Mr. Harris** and his family lived near Pioneer Park which was too close to three sources down there by the river, then the heights which was too close to ExxonMobil, then the west side of town which was still too close to a main influence and finally ended up on the very western edge of Billings. It was true that sulfur dioxide emissions had been cut considerably but there were still effects of sulfur dioxide

experienced at particular times and in particular places. Another fear **Mr. Harris** expressed was that there was nothing to keep industries from emitting up to 37,000 tons of sulfur dioxide per year. He also stated that it would be very beneficial to the people of Billings and for their economic well-being if there were some guarantee that they would not see any repetition of past years of emissions up to 35,000 tons per year and **SB 126** would give that support.

{Tape : 1; Side : B; Approx. Time Counter : 25 - 27.5}

Denise Roth Barber, representing herself as a citizen of Helena and a former citizen of Billings, arose in support of **SB 126** and offered written testimony, **EXHIBIT(nas11a03)**.

{Tape : 1; Side : B; Approx. Time Counter : 27.7 - 32.7}

{Tape : 2; Side : A; Approx. Time Counter : 0 - 0.6}

Kristin Sanderson, **Montana Audubon**, spoke in support of **SB 126**. **Ms. Sanderson** reported that with 3,200 members belonging to ten local chapters, Montana Audubon was well represented across the state. Over the last several years, the Yellowstone Valley Audubon, supported by approximately 550 members, had been interested and involved in sulfur dioxide bills. They were continually seeking a reduction in sulfur dioxide emissions in the Billings area and this bill would aid in the process.

{Tape : 2; Side : A; Approx. Time Counter : 0.8 - 1.5}

Anne Hedges, **Montana Environmental Information Center**, rose in support of **SB 126** and stated that this issue reminded her of watching college bowl football games when there is not an instant replay and it was so frustrating watching those games and knowing that the referee made the wrong call and not being able to do anything about it. She enjoyed watching professional football because there was instant replay option. Yesterday it proved handy a number of times in those games and **Ms. Hedges** thought that it was time for Montana to move up into the pros and actually have the ability to have instant replay to find out who was doing what and verify who was responsible for what happened and **SB 126** would do that.

{Tape : 2; Side : A; Approx. Time Counter : 1.7 - 2.5}

Opponents' Testimony:

Charles Brooks, **Billings Area Chamber of Commerce**, spoke in opposition of **SB 126** and stated that, as a representative of the

business community, the Billings Area Chamber of Commerce acknowledged that sulfur dioxide was a very dangerous element in the atmosphere. **Mr. Brooks** stated he was very familiar with asthma and respiratory diseases because he had three people within his immediate family who suffered from this disease. He emphasized there were many other elements in the atmosphere today that caused respiratory problems, not only sulfur dioxide, and thought that needed to be acknowledged. **Mr. Brooks** said this was an economic issue, as far as the Billings Area Chamber of Commerce was concerned. It seemed that the epicenter for this legislative session was going to be the problem with the costs of energy and electricity and economic development. He confined his remarks to the economics regarding these industries and that impact upon the Billings community. The various industries this bill would impact employed over 700 people in the Billings community. The average salary of those 700 was \$55,000 a year. In addition, there were contractors who did maintenance and repair work at the refineries that employed an additional 400 people on an annual basis with an average salary of \$55,000 annually. These industries paid property taxes each year to be estimated at approximately \$15,000,000. Their estimated yearly payroll amounted to approximately \$45,000,000 to \$50,000,000. That did not include all of the supplies and the various vendors in the Billings community that helped support these various enterprises. These corporations were also very good neighbors and were very much involved in the community in supporting various organizations; the art museum, the symphony, Montana State University-Billings Foundation and other education foundations. They contributed to the high quality of life in the Billings community and were to be commended for that. **Mr. Brooks** concluded that the Billings Chamber believed that with the proposed view of revised environmental laws and regulations, legislators and agencies must consider all valid and peer-reviewed sites and the real economic impact on the regulated industry. They had not heard any evidence of a scientific, independent peer review that was needed to adjust the Montana regulatory policy for sulfur dioxide, he said. In closing, **Mr. Brooks** encouraged the committee to take a very hard look at the impact this proposed legislation would have upon the Billings community.

{Tape : 2; Side : A; Approx. Time Counter : 2.9 - 8.1}

Webb Brown, Montana Chamber of Commerce, rose in opposition to **SB 126**. He stated that from **U.S. SENATOR BAUCUS'** economic development summit this past summer, throughout the campaign, and prior to this session, everyone had been talking about economic development and heightening jobs in Montana. Montana had long-standing industries here affected by this bill, not only in

Billings but elsewhere, that had spent millions of dollars cleaning up their emissions beyond federal standards and even beyond state standards. **Mr. Brown** stated that regarding the issue of modeling, the emissions through the modeling system were an inexact science at this time. This bill was not good for these existing industries with their high-paying jobs in Montana, the overall economy or any future developments in the state. The air was cleaner and the state was headed in the right direction so he urged the committee not to punish that success by adding more regulation on top.

{Tape : 2; Side : A; Approx. Time Counter : 8.3 - 10}

Gail Abercrombie, Executive Director, Montana Petroleum Association, spoke in opposition to **SB 126** and stated we had been through this exercise a number of times. She claimed the modeling system was the current issue and distributed **EXHIBIT(nas11a04)**, the Express, Volume 6/Issue 1 from ExxonMobil Billings Refinery and **EXHIBIT(nas11a05)**, an article titled Monitors show decrease in SO2 air emissions dated May 1, 2000, by the Billings Gazette. These exhibits will show the committee results of the modeling system currently in place in Billings. This modeling system was what determined whether a real violation had occurred or not occurred, not just a model violation that existed only in a computer. **Ms. Abercrombie** stated that the individual monitors in this article using the current modeling system showed results far below the state standard. These monitors get moved by DEQ on a regular basis if they thought there might be a potential hot spot. She also stated that industries had been fighting to stay competitive within their marketplaces, with Washington state and Canadian refineries, and in the portfolios of their own companies. Granted they may not close their doors, but if an Exxon or Conoco found the cost of operating the refineries got too burdensome, in comparison with their other refineries, they would go on the "for sale" block. **Ms. Abercrombie** stated Montana had good operators in the state and wanted to keep them and want to send a signal that Montana liked these good operators. In closing, **Ms. Abercrombie** reinforced that the emissions were low and falling and urged "do not go step 1, step 2, step 3, step 4...we could go on forever".

{Tape : 2; Side : A; Approx. Time Counter : 10.1 - 12.6}

David Debats, Supervisor of Activities in Environmental Safety Training, Exxon Mobil Refinery, spoke in opposition of **SB 126**. **Mr. Debats** stated that **ExxonMobil Billings Refinery** believed the current law was protective of human health and current data showed that the Billings-Laurel area had undergone a significant improvement in air quality over the last few years. **Mr. Debats**

asked the committee to consider the following facts. Sulfur dioxide emissions in the Billings-Laurel area decreased to a seventeen year low in 1999. Total Yellowstone County and ExxonMobil emissions had dropped in excess of 60% from 1992 to 1999. Annual average ambient sulfur dioxide levels measured by the monitors had dropped 75% in that same time period. Preliminary 2000 ambient air quality looked comparable to 1999. No exceedances of any of the state sulfur dioxide standards had occurred for the past three years. Current data pointed to the fact that air quality was improved. ExxonMobil supported the current SIP of March 1998 and believed it should be allowed to work. In addition, ExxonMobil believed that industry and the state had worked cooperatively together to reduce emissions and they were committed towards a continued good working relationship designed to progress air quality improvement initiatives. Because of these improvements and because the process was working, ExxonMobil believed that **SB 126** was unnecessary. ExxonMobil also had concerns about bill language that appeared to be vague, difficult to interpret, and ultimately confusing to implement. It was unclear what was meant by multiple industries in close proximity. It was also unclear as to the scientific basis for reducing the number of allowable exceedances to three. ExxonMobil believed that any government action must be based on sound science utilizing costs methods analysis, actual compliance information and consistent fair enforcement. ExxonMobil did not believe that **SB 126** met that reasonable standard. Beyond those concerns, ExxonMobil believed that **SB 126** could require the implementation of a new SIP. Their experience alerted them that the SIP process could be long and costly. In light of the significant air quality improvements in the Billings area, ExxonMobil believed that the SIP process was working. They believed that industry was meeting its commitment to reduce sulfur dioxide emissions and would continue to work for science-based and cost effective air quality improvements. With current law protective of human health and the environment, with enforcement of sulfur dioxide limits assured through monitoring and the current SIP with industry and state cooperation in place, ExxonMobil believed that **SB 126** was not necessary. In closing, **Mr. Debats** stated that ExxonMobil stood ready to work with **SEN. BOHLINGER** and other interested parties in addressing air quality concerns and were committed to the people of Montana, the environment and our state's future. **EXHIBIT (nas11a06)**

{Tape : 2; Side : A; Approx. Time Counter : 12.8 - 16.7}

Max Sims, Environmental Health and Safety Engineer, Cenex Harvest States Cooperative Refinery, Laurel, offered testimony in opposition to **SB 126**. During the 1990's, the U.S. EPA ordered the state of Montana to revise the SIP for the emissions of sulfur

dioxide in the Billings/Laurel area. The EPA did so because the state of Montana's DEQ had determined via computer modeling studies that the airshed in the Billings/Laurel area was not in compliance to the national ambient air quality standards for sulfur dioxide. Revising the SIP was a long and arduous process for all parties involved but it culminated nearly three and a half years ago with sulfur dioxide emission control plans for each seven industrial entities in the Billings/Laurel area. He heard someone say that there were not specific limits associated with these control plans. That was not true and **Mr. Sims** stated there were specific limits. At the Cenex Refinery, they had three hour, 24-hour and annual limits on a stack by stack basis. Since the implementation of these control plans in early 1998, the current Billings/Laurel sulfur dioxide emission levels had decreased dramatically from historical levels. For Cenex alone, sulfur dioxide emission levels at their refinery had decreased from approximately 9,000 tons per year to approximately 3,000 tons per year. The seven industrial entities that were each parties to these sulfur dioxide control plans had, in combination, reduced the sulfur dioxide emissions in the Billings/Laurel area from nearly 35,000 tons per year to less than 14,000 tons per year today. As a result of this tremendous effort on the part of industry, the current Billings/Laurel sulfur dioxide emissions levels were now well below federal and state standards. The extensive monitoring network in and around the Billings/Laurel area had verified no violations of either the federal standard or the more stringent state of Montana standards. EPA's mandate for revision of the SIP had been successfully accomplished with the desired and verifiable results. As good as this news was for the people living in Billings and Laurel, there was still more progress being made in reducing sulfur dioxide emissions in that area. The driving public, perhaps unknowingly, contributed on a daily basis to pollution reduction via the burning of gasoline and diesel fuel that were lower in sulfur content than fuels of the past. The nearly \$100,000,000 investment of Cenex had made in our hydro-sulfurization process resulted in production of lower sulfur fuels. The use of these fuels equated to a reduction of about 4,000 tons per year in sulfur dioxide emissions. Recently EPA mandated further sulfur reductions in both gasoline and lower sulfur diesel fuel that would result in yet a greater contribution on the public's part in reducing emissions of sulfur dioxide. So the trend for sulfur dioxide emissions was in the right direction and with the additional mandates from EPA for lower sulfur fuels, the trend would continue in that direction. With this being the case, **Mr. Sims** stated he was at a loss in trying to conceive the logic behind **SB 126**. Industries in the Billings/Laurel area had invested nearly \$500,000,000 in equipment that had resulted in the desired and verified results of reducing sulfur dioxide emissions in that area to the point

that they were compliant with the national ambient air quality standards on a model as well as real world basis. It just did not seem to be a wise utilization of scarce time, resources, or money chasing after computer generated violations of state standards, especially in light of the fact the extensive monitoring network in place in their valley had verified no violations of these standards or state standards. At a time when every petroleum company was weighing the decision whether or not to make the tremendous additional investment in plant and equipment with the ever more stringent environmental regulations imposed on U.S. refiners it did not seem to be a prudent move on the part of the state of Montana to require the expenditure of precious capital chasing phantom problems. The sky was not falling, in fact, given the tremendous reductions in sulfur dioxide emissions that had occurred and were continuing in that direction it could be said both figuratively as well as literally that in the Billings/Laurel area at least; the sky was rising.

Mr. Sims concluded his testimony by relating that his great grandparents came to this great state from Missouri. He guessed it must be that transplanted Missouri heritage that made him ask that someone first show him that a problem existed in reality before we went chasing ones at great expense that simply did not exist.

{Tape : 2; Side : A; Approx. Time Counter : 16.9 - 22.6}

Terry Coble, Senior Environmental Engineer, Asarco, East Helena, stood in opposition to **SB 126**. Asarco had a primary lead smelter in operation in East Helena. **Mr. Coble** discussed the controls that Asarco had installed over the last 20 years for reduction of sulfur dioxide and did not believe **SB 126** was needed for further sulfur dioxide controls. The EPA had established varying limits for criteria, such as pollutants including sulfur dioxide. These criteria coincide limits, annual, quarterly, daily, even hourly limits. They were designed to protect the health and general public and made sure they were not endangered by pollution. Regulatory guidelines for initially developing a SIP required that modeling be the only means of demonstrating compliance. Monitoring data was not allowed. So you would work from a SIP backwards, basically. First the model would be done, then industry would determine if they could meet the emission limits at the ambient sites and then they would set control factors on the facility. These ultra-conservative models were used to initially develop the SIP and then test by monitoring hot spots. These hot spots were only used for National Ambient Air Quality Standards (NAAQS). The facilities themselves had varying limits placed on them for operating their pollution control devices as well as their sources. In 1994, Asarco and Montana DEQ completed a SIP for the control of the primary sulfur dioxide standard.

Asarco was currently very close to finalizing, with the Montana DEQ, a secondary SIP for control of sulfur dioxide in the East Helena area and the secondary sulfur dioxide limits. Asarco had demonstrated through both modeling and monitoring that limits could be met. In fact, Asarco had not monitored an ambient exceedance in over 14 years. This fact clearly indicated Asarco's willingness to strive to meet the ambient limits specifically designed to protect public. Asarco failed to see the rationale in the science for forcing even tighter regulations than those already in place by further limiting a standard which was designed to be equal or more stringent than already existing federal standards.

{Tape : 2; Side : A; Approx. Time Counter : 22.8 - 25.4}

Rae Olsen, Director, Corporate Relations, PPL Montana, echoed testimony Dr. Carlton Graham of their company made regarding a similar measure last session. PP&L Montana owned eleven hydro-electric dams and interests in two coal-fired power plants in Montana including Colstrip and Corrette. In 1996, Corrette made a change in coal supply to be in early compliance with the 1998 sulfur dioxide requirements of the SIP. PP&L Montana took its environmental responsibility very seriously as their 500 employees and their families lived and worked in the communities in which their facilities were located. That was why it was important to them that their facilities demonstrated full compliance with all existing ambient standards at Corrette and Colstrip and continued to meet the requirements. Depending on the detailed mathematical modeling that would be required by this bill, including both local terrain and meteorological data, it could potentially mean that they would be required to reduce current emissions by more than 40% at both Billings and Colstrip. In the case of Corrette, it might very well become uneconomic to operate that facility and comply with that level of reductions at this time. That would eliminate approximately 150 megawatts of generation that complied with all environmental laws; at the same time that this legislature was trying to come up with additional sources of energy generation to meet the increasing demands in this state and elsewhere.

{Tape : 2; Side : A; Approx. Time Counter : 25.7 - 27.7}

Steve Wade, Conoco, opposed SB 126 and stated that the primary issue was whether the regulation should be based on mathematical modeling or on sound scientific data. Conoco believed before the legislature should act they should have the science before enacting regulations.

{Tape : 2; Side : A; Approx. Time Counter : 27.8 - 28.4}

Don Allen, Western Environmental Trade Association (WETA), stood in opposition to **SB 126** and stated that WETA was a coalition of agriculture, labor and business industry, recreation, and trade associations that promoted environmentally-responsible economic development and opportunities. In terms of WETA's members who would be affected by this bill, **Mr. Allen** stated their members felt it was a step backwards in terms of what had been accomplished over the last few years and the efforts that had been made to really comply and work with this program and make it work. **Mr. Allen** claimed WETA's members were saying there was not a problem in terms of having to go this far to comply. The fiscal note really only referred to \$65,000 the first year, \$58,000 the second year and that really was a drop in the bucket compared to the costs of compliance. **SB 126** would only add to the already high and continually rising fees that the industry had to pay. This was a special revenue account and those dollars on the right side of the fiscal note would come out of the pockets of those who would have to comply with the legislation.
{Tape : 2; Side : A; Approx. Time Counter : 28.5 - 30.6}

Dexter Busby, Montana Refining Company, stood in opposition of **SB 126**. Short testimony lost at time of tape change. No written testimony or witness statement was provided.

{Tape : 2; Side : B; Approx. Time Counter : 0 - 1.9}

Questions from Committee Members and Responses:

SEN. KEN TOOLE stated he did not understand why, if you had a current situation with a violation and it was very hard to assess who the party was that was responsible for that violation, there would be resistance to a monitoring system that was site-specific; enabling the enforcement agency to attribute that violation to the responsible party. **David Debats** responded that this situation had not come up where industry has been at odds or where a monitor had showed something that industry had not come forward to report. **Mr. Debats** felt it was a bad precedent and that industry had already demonstrated there was not a problem. **Mr. Debats** stated it seemed arbitrary to him in that in no other "regulated" communities in Montana was modeling done first to make sure that there would not be an exception when there had not been a demonstration of a problem and this was not consistent state-wide. **Mr. Debats** reported that ExxonMobil had continued emission monitors of sulfur dioxide in all of their stacks and that they were required to report to the state when any violation had been exceeded. **Mr. Debats** also reported that ExxonMobil was subject to unannounced state inspections and believed there was plenty of regulation and regulatory oversight going on and stated

it was hard for him to imagine a situation where a monitor would show an exceedance registered and the agency could not go back to the industrial source. **Mr. Debats** claimed the data was there now. **SEN. TOOLE** asked if the federal system was based on this model. **Mr. Debats** stated **SEN. TOOLE** was correct as the federal system was based on modeling. **Mr. Debats** reported that the current SIP that ExxonMobil had in Billings was modeled to federal standards. **SEN. TOOLE** questioned **Mr. Debats** for understanding that the state was discussing the issue of adopting a lower standard than the federal standard. **Mr. Debats** stated there already was an existing state standard that was lower than the federal standard and that **SB 126** proposed to model to the state standard. **SEN. TOOLE** questioned whether there had ever been an exceedance problem or violation at ExxonMobil. **Mr. Debats** advised there had not been an exceedance of any of these, more stringent, state standards in the last three years. He went on to say that most likely when the 2000 report was out, he doubted that any exceedances or violations would show based on the preliminary gauges; though the report had not gone through quality assurance and quality control.

{Tape : 2; Side : B; Approx. Time Counter : 2.1 - 7.2}

VICE-CHAIR DALE MAHLUM asked **Denise Roth-Barber** what they wanted; relating that sulfur dioxide emissions had gone from 35,000 ton down to 13,650 ton. **Ms. Barber** stated they would like those lower levels to continue at the very least because what current law allowed with levels could be as high as 37,000 ton and tied with the federal government allowance. **Ms. Barber** went on to say that approximately three or four years ago, she had met with ExxonMobil representatives and asked them if they would cap themselves at their current levels and ExxonMobil representatives said they would not. **Ms. Barber** reported she also wrote a letter to the other companies asking if they would at least cap themselves at their current levels, recognizing the reductions they had made and appreciating those reductions. The other companies also responded that they would not. **Ms. Barber** stated she wanted to ensure that the levels would not go back up because they could under current existing law. She stressed that **SB126** would not require them to reduce the state's existing pollution laws.

{Tape : 2; Side : B; Approx. Time Counter : 7.4 - 9.2}

SEN. GLENN ROUSH asked **SEN. BOHLINGER** about his door to door campaigning with one of the biggest concerns being the emissions in **SEN. BOHLINGER'S** district. **SEN. ROUSH** asked if him if there were many comments made by his constituents about shutting these

plants down altogether. **SEN. BOHLINGER** responded that he did not sense that or recall hearing any comments referencing that. He stated his district appreciated the jobs enhancing the economic base of their community and that these industries supported the arts, the zoo, and were significant players in the community and they did not want to lose that. **SEN. ROUSH** stated that he was well aware that this bill would not just affect the Billings and Yellowstone Valley area. **SEN. ROUSH** spoke about the weather inversions often experienced in the winter months in western Montana and also in the Yellowstone Valley and enlighteningly stated it was too bad he couldn't send some of the wind in his area to these areas to clear the air though he had no control over that. **SEN. ROUSH** said it seemed to him that with emission levels way down that it appeared that some people would like to see the plants moved out of that valley or possibly shutdown. **SEN. BOHLINGER** responded to **SEN. ROUSH'S** first concern and stated that **SB126's** specific language as found on page 1, line 14, stated this bill would only apply in areas where multiple industries were producing sulfur dioxide and were located in close proximity and as the fiscal note indicated the only two communities in the state that would be affected by this at this time were Billings/Laurel area and the East Helena area. The EPA had required development of a SIP for that area but it could be anticipated that if there were multiple sources of SO₂ located in western Montana, it would address those concerns also.

{Tape : 2; Side : B; Approx. Time Counter : 9.3 - 14.9}

SEN. VICKI COCCHIARELLA asked **Gail Abercrombie** about the committee having heard someone state that it was ok to violate the state standards and go with the federal standards. **SEN. COCCHIARELLA** wanted to know if that was the case and if **Ms. Abercrombie** agreed that companies had permission to violate the state standards and would not get in trouble and if there was no enforcement of that. **Ms. Abercrombie** responded that if the state standards were violated they were enforced and stated she was also disappointed that the DEQ was not in attendance at this meeting because in the past the planning group at DEQ were able to tell the committee how they would determine who had caused the violation, should one occur with the state standard. **Ms. Abercrombie** added that **Mr. Debats** had stated that each of the emission sources had the continued emissions monitors in their stacks and, even without an ambient air quality violation in that ambient air monitor, if they violated an emission limit within that stack, even without causing any violation of the air standard, they would get called on the carpet for that and be fined and given a violation for that; so there were those emission requirements. **Ms. Abercrombie** said that the one thing that was brought up by **Rae Olsen** of PP&L was the issue of

modeling versus actual and the model violations took into account mathematical calculations and the absolutely worse case of air quality, dead air, all the inversion you could ever imagine and every single industry running full out at 100% capacity. This was where industry experienced that issue of modeling so that industry would not violate in those situations and industry was penalized and had to cut their allowable emissions by 40% despite not having violated anything.

{Tape : 2; Side : B; Approx. Time Counter : 15.0 - 18.0}

SEN. MIKE TAYLOR inquired, if industry was cited with a violation of the standard or emission limit, what the monetary fine would be. **Mr. Debats** responded that the state of Montana could fine you up to \$15,000 and if they elected could forward that to the U.S. EPA as they also have oversight. **Mr. Debats** thought the EPA had a limit of \$25,000 a day that they could fine industry. **SEN. TAYLOR** asked if, in the last four years, any of the industries in the Billings area had been fined. **Mr. Debats** recalled that ExxonMobil had been fined in the last few years with one or two violations of their SIP emission levels.

{Tape : 2; Side : B; Approx. Time Counter : 18.0 - 20.4}

SEN. TOOLE asked, hypothetically, if you were in a community and standards had been set and you had the multiple industrial sources there and the modes were in place and a new refinery moved into town, would the allowable amount of SO₂ in the community rise or would all of the other industries have to drop their emission levels to stay within the standard. **Mr. Debats** responded that the SIP would have to be re-opened and SO₂ emissions from the new facility entering the area would have to be modeled with all the other sources and most likely would result in lower allowable emission for all the other facilities. **SEN. TOOLE** asked if the goal of this legislation was to create a ceiling. **Mr. Debats** stated the goal of the SIP was to ensure that federal ambient standards were met. **SEN. TOOLE** asked about fines and if they were an issue for ExxonMobil. **Mr. Debats** stated they were fined with violations for individual emission limits at their facility that were part of the SIP for SO₂ emissions, but that the ambient air standard measured by the monitors were not exceeded.

{Tape : 2; Side : B; Approx. Time Counter : 20.5 - 23.9}

SEN. TASH asked how parts per million were equated to tons per day. **Mr. Coble** responded that there was an extensive calculation that was used to equate to tons per day based on flow and temperature and parts per million of SO₂. Asarco had three

facilities that were in operation with three continuous emission monitors with limits on each. **Mr. Coble** explained that the way the SIP worked was backward. Industry would have a model that predicted complete compliance of the NAAQS standard out at the area level where everybody lived and to accomplish that industry would have to go back to the source and model that source with all of these variances and make sure that when they operated that facility at full bore that what their full bore limit was going to be would not violate the ambient limits. **Mr. Coble** emphasized that modeling already had been done on the facilities that have SIPs in place. These NAAQS limits placed on these facilities were measured continuously at each facility. At Asarco, they had three limits and he was sure ExxonMobil had more. Conoco and the other refineries in Billings had limits on their stacks so that when they all were operating at full capacity, the model showed that they were going to meet the NAAQ standard outside at the worst weather conditions, inversions, downlaunch, etc. **SEN. TASH** questioned why **SEN. BOHLINGER** had not signed the fiscal note. **SEN. BOHLINGER** stated he did not have faith in some of the calculations and did not feel there would be this kind of financial impact to industry.

{Tape : 2; Side : B; Approx. Time Counter : 24.0 - 27.2}

Closing by Sponsor:

SEN. BOHLINGER offered that what he found puzzling was, that in spite of these industry investments and the significant reductions of sulfur dioxide emissions that had been achieved with the 62% emissions reduction from 35,266 tons in 1993 down to 13,246 tons in 1999, that industry would oppose this measure. Under the present law, we are protecting the people of the state but there is a disconnection here in that the SIP was based on complying with the federal standard in allowing for sulfur dioxide emissions. This federal standard does not meet our state standard. Our state standard is a more rigid standard and we have no assurance that industrial sources who have in-stack monitors that are measuring emissions everyday, if a violation occurred, that the state would be able to determine who the violator was without going through a lengthy and costly process. Now there wasn't a proponent for this bill that would say "the sky was falling". He heard concerned citizens speak about the possibility of a violation and the inability of the DEQ to determine who the violator was. **SB126** was about the process of assigning responsibility. **SEN. BOHLINGER** responded to some of the comments made by the opponents. **Mr. Brooks** acknowledged the dangers of SO₂ and spoke specifically of members of his family that have suffered as a result of pulmonary disorders. It puzzles **SEN. BOHLINGER** why **Mr. Brooks** would not be supportive of

an effort to insure compliance of the state standard. **SEN. BOHLINGER** stated **Mr. Webb Brown** had talked about how the focus of this session would be that of economic development and providing affordable power to the citizens of our state. **SEN. BOHLINGER** stated he thought everyone was concerned about good paying jobs and affordable power for our people though he did not seem to make the connection of what **SB126** asked for as an interference in either of these objectives.

{Tape : 2; Side : B; Approx. Time Counter : 27.3 - 32.6}

Real violations could be detected and monitoring systems were already in place that could detect them. The question was about who was responsible for the violations. Our present system just made it impossible to assign responsibility and tell precisely who the guilty party was. **SEN. BOHLINGER** stated that he hoped that when the committee took executive action they would focus their concerns on that intent of this bill. It was not meant to be punitive or punish any one of these industrial sources. **SB126** addressed a good public health concern and he encouraged the committee to give this bill a Do Pass.

CHAIRMAN BILL CRISMORE added that regarding **DEQ** not attending this hearing, **Jan Sensibaugh, Director, DEQ**, came to the Chair and Vice-Chair right before the meeting started and advised that **DEQ** had been asked to not take a position on this bill. **DEQ** would be here when the committee took executive action to answer any technical questions the committee might have.

{Tape : 3; Side : A; Approx. Time Counter : 0 - 3.9}

ADJOURNMENT

Adjournment: 4:50 P.M.

{Tape : 3; Side : A; Approx. Time Counter : 3.9 - 5.1}

SEN. WILLIAM CRISMORE, Chairman

NANCY BLECK, Secretary

WC/NB